

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Honorable Noel L. Hillman
	:	
	:	
	:	
v.	:	Crim. No. 10-39 (NLH)
	:	
JAMES PEYTON	:	
	:	

O R D E R

Upon consideration of the United States' Motion for Disclosure pursuant to Fed. R. Crim. P. 6(e)(3)(E)(i), the accompanying memorandum of law, and the annexed Declaration of Kristina L. Rico, and full consideration having been given to the matters set forth therein, the Court finds:

(1) On January 26, 2010, James Peyton waived Indictment and pled guilty to Counts 1 and 3 of a 3 count Information filed by the United States Attorney for the District of New Jersey, Crim. No. 10-39 (NLH). On January 24, 2011, the Court sentenced Mr. Peyton to a term of 42 months imprisonment on Count One and a term of 36 months imprisonment on Count Three to be served concurrently. Additionally, Mr. Peyton was ordered to serve a three year term of supervised release and to make restitution in the amount of \$119,600 to the New Jersey Department of Labor. The criminal investigation of this matter and any related grand jury proceedings have concluded.

(2) Pursuant to the plea agreement entered in United States v. James Peyton, Crim. No. 10-39 (NLH), James Peyton (1)

agreed to allow the contents of the Internal Revenue Service - Criminal Investigation Division ("IRS-CI") file in this case to be given to IRS civil attorneys and support staff to enable them to investigate any and all civil penalties that may be due and owing James Peyton and James Peyton (2) agreed to waive any rights under Title 26, United States Code, Section 7213 and Fed. R. Crim. P. 6(e), and any other right of privacy with respect to his tax returns and return information.

(3) The Federal income tax liabilities of James Peyton for the years 2006, 2007, 2008 and 2009 are being contested in a proceeding before the United States Tax Court. Internal Revenue Service, Office of Chief Counsel ("IRS"), in its Answer to claims raised by James Peyton and at trial, has the burden of affirmatively establishing facts to establish a basis for the fraud penalty for the years 2006 through 2009 in order to show the statute is open pursuant to 26 U.S.C. §6501(c) and that the unreported income identified in the Statutory Notice of Deficiency has not been previously assessed.

(4) The IRS has represented that it needs access to the IRS-CI investigative file and to materials obtained pursuant to grand jury subpoena, as well as to any testimony, exhibits or evidence presented to the Grand Jury or prepared in connection with the criminal case to enable it to respond in an Answer, to the allegations raised by Mr. Peyton in his Petition before the United States Tax Court, and to carry its burden of proving the fraud penalty.

(5) The need for disclosure is greater than the

residual need for Grand Jury secrecy.


IT IS THEREFORE ORDERED, pursuant to Rule 6(e)(3)(E)(i) of the Federal Rules of Criminal Procedure, that the United States Attorney's Office for the District of New Jersey, IRS-CI, and the Federal Bureau of Investigation (collectively "the Government") are authorized to disclose and make available to Kristina L. Rico and any other attorneys of the Office of Chief Counsel, Internal Revenue Service, who are representing or may be representing the Commissioner of the Internal Revenue Service in the United States Tax Court proceeding of James A. Peyton v. Commissioner, Docket No 5086-12, and any other employees of the Internal Revenue Service who are or may be assigned to assist the above-mentioned attorneys, the IRS criminal file and the contents therein prepared in connection with the criminal prosecution of James Peyton, Crim. No. 10-39 (NLH);

IT IS FURTHER ORDERED that the Government is authorized to disclose any and all transcripts of testimony before the grand jury, and any and all records, and documents obtained pursuant to grand jury subpoena in the investigation of James Peyton, Crim. No. 10-39 as well as all reports, memoranda, exhibits, and charts prepared by the criminal investigators for consideration by the grand jury or in connection with the criminal prosecution of James Peyton to Kristina L. Rico and any other attorneys of the Office of Chief Counsel, Internal Revenue Service, who are representing or may be representing the Commissioner of the Internal Revenue Service in the United States Tax Court

proceeding of James A. Peyton v. Commissioner, Docket No 5086-12, and any other employees of the Internal Revenue Service who are or may be assigned to assist the above-mentioned attorneys.

IT IS FURTHER ORDERED that the IRS will use the materials and records obtained pursuant to this Order only for the limited purpose of the United States Tax Court proceeding of James A. Peyton v. Commissioner, Docket No 5086-12 including providing materials to the Tax Court, James Peyton, and any attorney retained by James Peyton for purposes of litigation or trial in this case.

IT IS FURTHER ORDERED that the IRS will afford all tax return and tax return information the protections required by 26 U.S.C. § 6103.



Honorable Noel L. Hillman
United States District Judge

Dated:

June 11, 2012

At:


Camden, NJ

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Government's Motion for Disclosure under Fed. R. Crim. P. 6(e), the Government's Memorandum Of Law In Support Of Motion For Disclosure Under Fed. R. Crim. P. 6(e), the Affidavit and the proposed Order were served on:

Charles I. Coant
O'Neill & Coant, PC
30 West Chestnut Avenue
Vineland, NJ 08360

by first class United States mail and by electronic filing.



Matthew Skahill
Assistant United States Attorney

DATED: 6/7/12